

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. W.A.
DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA AND
OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR
THE NATURAL RESOURCES FOR
THE STATE OF OKLAHOMA,**

Plaintiff,

v.

Case No. 05-CV-00329 GKF-SAJ

**TYSON FOODS, INC., TYSON
POULTRY, INC., TYSON CHICKEN,
INC., COBB-VANTRESS, INC., CAL-
MAINE FOODS, INC., CAL-MAINE
FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION,
LLC, GEORGE'S, INC., GEORGE'S
FARMS, INC., PETERSON FARMS,
INC., SIMMONS FOODS, INC., and
WILLOW BROOK FOODS, INC.,**

Defendants.

POULTRY PARTNERS, INC.'S BRIEF AMICUS CURIAE

INTRODUCTION

Poultry Partners, Inc. (Poultry Partners) is an organization of approximately 455 Members, the vast majority of whom operate family farms in Oklahoma, Arkansas and Missouri. Many of those farms are located in the Illinois River Watershed. Members raise poultry, and many also grow grass and raise cattle. Family farming is a unique way of life, and Poultry Partners is dedicated to promoting and preserving that way of life. The result of granting the injunction sought by the Plaintiff in this case would be to imperil that way of life.

ARGUMENT

Many of the Members of Poultry Partners have contractual relations with the Defendants in this case. Accordingly, this Court admonished Poultry Partners, in the Order (Docket 1447) granting Poultry Partners permission to file a Brief Amicus Curiae, to “take special care in avoiding duplication of defendants’ briefs.”

Counsel for Poultry Partners has read the Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Document 1531) and its supporting Declarations. Poultry Partners believes the Defendants’ Memorandum, at pages 42-44, and the Declaration of Dr. Gordon Rausser and Dr. Michael Dicks, do an excellent job of informing the Court of the macro-economic effects which would result from granting the Plaintiff’s requested injunction.

However, cold economic statistics are just that--cold statistics. It is one thing to project a financial loss in the Illinois River Watershed of up to \$77 million during the first year of an injunction. It is another to know the effect on individual family farmers. Poultry Partners, as an organization of family farmers, is uniquely positioned to explain to the Court why granting the requested injunction will imperil the family farm way of life.

Family farmers are fiercely independent. They, and they alone, decide what to do with the poultry litter produced on their farms.¹ Many decide to use litter as fertilizer. In fact, some farmers raise poultry primarily because it provides them with free fertilizer.² Because the soils in eastern Oklahoma and western Arkansas are nutrient poor, poultry litter acts as both a soil amendment and fertilizer. Its use has improved the soils, thereby retarding erosion and allowing

¹ See ¶ 8 of the Affidavit of Jerry Hunton, ¶ 7 of the Affidavit of Jim Pigeon, ¶ 8 of the Affidavit of Ricky Reed, and ¶ 6 of the Affidavit of Al Saunders. Each of these Affidavits is attached hereto and incorporated herein by reference.

² See ¶ 7 of the Hunton Affidavit, ¶ 6 of the Pigeon Affidavit, ¶ 7 of the Reed Affidavit, and ¶ 5 of the Saunders Affidavit.

a larger amount and better quality of grass to be grown.³ Increased and healthy grass production allows farmers to run more cattle than they could relying upon native grasses.⁴ Absent use of litter as fertilizer, these family farmers will have to reduce their cattle herds by one-third to one-half, thereby losing a substantial portion of their income.⁵ Replacing litter with commercial fertilizer is not an economically viable option.⁶ In addition, having to transport litter out of the watershed will impose additional substantial costs on these family farms.⁷ Because the average profit margin for agriculture is only 2 to 4% a year,⁸ these lost profits and increased expenses will result in devastating losses to these family farmers.⁹ Some may have to cease farming altogether.¹⁰

The effect on these Affiants, and the other Members of Poultry Partners, must be considered by this Court prior to issuing a preliminary injunction. *U.S. v. Power Engineering Co.*, 191 F.3d 1224 (10th Cir. 1999). Such consideration is particularly important here because there is no evidence in this case showing that these non-parties, the Members of Poultry Partners, are not complying with their Nutrient Management Plans as required by state law and regulations. They are good stewards of their land who should not be gratuitously punished for doing everything right.

³ See ¶ 11 of the Hunton Affidavit and ¶ 12 of the Reed Affidavit.

⁴ See ¶¶ 7 and 9 of the Hunton Affidavit, ¶¶ 6 and 8 of the Pigeon Affidavit, ¶¶ 7 and 9 of the Reed Affidavit, and ¶¶ 5 and 10 of the Saunders Affidavit.

⁵ See ¶ 9 of the Hunton Affidavit, ¶ 9 of the Pigeon Affidavit, ¶ 9 of the Reed Affidavit, and ¶¶ 3, 7 and 10 of the Saunders Affidavit.

⁶ See ¶ 10 of the Hunton Affidavit, ¶ 10 of the Pigeon Affidavit, ¶ 10 of the Reed Affidavit, and ¶¶ 8 and 9 of the Saunders Affidavit.

⁷ See ¶ 12 of the Hunton Affidavit, ¶ 12 of the Pigeon Affidavit, and ¶ 11 of the Reed Affidavit.

⁸ See ¶ 10 of the Hunton Affidavit.

⁹ See ¶ 12 of the Hunton Affidavit, ¶¶ 10 and 11 of the Reed Affidavit, and ¶ 9 of the Saunders Affidavit.

¹⁰ See ¶ 12 of the Hunton Affidavit and ¶¶ 10 and 11 of the Reed Affidavit.

CONCLUSION

The result from granting an injunction as requested by the Plaintiff would be to impose severe financial hardship on the Members of Poultry Partners, for little or no corresponding benefit to the environment. Accordingly, Poultry Partners requests that the request for an injunction be denied.

Respectfully submitted,

s/ Michael D. Graves

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CERTIFICATE OF SERVICE

I certify that on the 15th day of February, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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